

§ 901.20, Nt.

20 CFR Ch. VIII (4–1–11 Edition)

any material inadequacies therein and the implications thereof, and the actuarial methods and assumptions employed.

(g) *Utilization of enrolled actuary designation.* An enrolled actuary shall not advertise his/her status as an enrolled actuary in any solicitation related to the performance of actuarial services, and shall not employ, accept employment in partnership, corporate, or any other form, or share fees with, any individual or entity who so solicits. However, the use of the term “enrolled actuary” to identify an individual who is named on the stationery, letterhead or business card of an enrolled actuary, or of a partnership, association, or corporation shall not be considered in violation of this section. In addition, the term “enrolled actuary” may appear after the general listing of an enrolled actuary’s name in a telephone directory provided such listing is not of a distinctive nature.

(h) *Notification.* An enrolled actuary shall provide written notification of the non-filing of any actuarial document he/she has signed upon discovery of the non-filing. Such notification shall be made to the office of the Internal Revenue Service, the Department of Labor, or the Pension Benefit Guaranty Corporation where such document should have been filed.

[40 FR 18776, Apr. 30, 1975, as amended at 43 FR 39757, Sept. 7, 1978]

EFFECTIVE DATE NOTE: At 76 FR 17775, Mar. 31, 2011, § 901.20 was amended by revising paragraphs (b), (d), (e), (f), and (g); redesignating paragraph (h) as paragraph (k) and adding a new paragraph (h); adding and reserving paragraph (i); and adding new paragraphs (j) and (l), effective May 2, 2011. For the convenience of the user, the added and revised text is set forth as follows:

§ 901.20 Standards of performance of actuarial services.

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(b) *Professional duty.* (1) An enrolled actuary shall perform actuarial services only in a manner that is fully in accordance with all of the duties and requirements for such persons under applicable law and consistent with relevant generally accepted standards for professional responsibility and ethics.

(2) An enrolled actuary shall not perform actuarial services for any person or organization which he/she believes, or has reasonable

grounds to believe, may utilize his/her services in a fraudulent manner or in a manner inconsistent with law.

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(d) *Conflicts of interest.* (1) Except as provided in paragraph (d)(2) of this section, an enrolled actuary shall not perform actuarial services for a client if the representation involves a conflict of interest. A conflict of interest exists if—

(i) The representation of one client will be directly adverse to another client; or

(ii) There is a significant risk that the representation of one or more clients will be materially limited by the enrolled actuary’s responsibilities to another client, a former client, or by a personal interest of the enrolled actuary.

(2) Notwithstanding the existence of a conflict of interest under paragraph (d)(1) of this section, the enrolled actuary may represent a client if—

(i) The enrolled actuary reasonably believes that he or she will be able to provide competent and diligent representation to each affected client;

(ii) The representation is not prohibited by law; and

(iii) Each affected client waives the conflict of interest and gives informed consent at the time the existence of the conflict of interest is known by the enrolled actuary.

(e) *Assumptions, calculations and recommendations.* (1) The enrolled actuary shall exercise due care, skill, prudence and diligence when performing actuarial services under ERISA and the Internal Revenue Code. In particular, in the course of preparing a report or certificate stating actuarial costs or liabilities, the enrolled actuary shall ensure that—

(i) Except as mandated by law, the actuarial assumptions are reasonable individually and in combination, and the actuarial cost method and the actuarial method of valuation of assets are appropriate;

(ii) The calculations are accurately carried out and properly documented; and

(iii) The report, any recommendations, and any supplemental advice or explanation relative to the report reflect the results of the calculations.

(2) An enrolled actuary shall include in any report or certificate stating actuarial costs or liabilities, a statement or reference describing or clearly identifying the data, any material inadequacies therein and the implications thereof, and the actuarial methods and assumptions employed.

(f) *Due diligence.* (1) An enrolled actuary must exercise due diligence—

(i) In preparing or assisting in the preparation of, approving, and filing tax returns, documents, affidavits, and other papers relating to the Department of the Treasury,

the Department of Labor, the Pension Benefit Guaranty Corporation, or any other applicable Federal or State entity;

(ii) In determining the correctness of oral or written representations made by the enrolled actuary to the Department of the Treasury, the Department of Labor, the Pension Benefit Guaranty Corporation, or any other applicable Federal or State entity; and

(iii) In determining the correctness of oral or written representations made by the enrolled actuary to clients.

(2) An enrolled actuary advising a client to take a position on any document to be filed with the Department of the Treasury, the Department of Labor, the Pension Benefit Guaranty Corporation, or any other applicable Federal or State entity (or preparing or signing such a return or document) generally may rely in good faith without verification upon information furnished by the client. The enrolled actuary may not, however, ignore the implications of information furnished to, or actually known by, the enrolled actuary, and must make reasonable inquiries if the information as furnished appears to be incorrect, inconsistent with an important fact or another factual assumption, or incomplete.

(g) *Solicitations regarding actuarial services.* An enrolled actuary may not in any way use or participate in the use of any form of public communication or private solicitation related to the performance of actuarial services containing a false, fraudulent, or coercive statement or claim, or a misleading or deceptive statement or claim. An enrolled actuary may not make, directly or indirectly, an uninvited written or oral solicitation of employment related to actuarial services if the solicitation violates Federal or State law, nor may such person employ, accept employment in partnership form, corporate form, or any other form, or share fees with, any individual or entity who so solicits. Any lawful solicitation related to the performance of actuarial services made by or on behalf of an enrolled actuary must clearly identify the solicitation as such and, if applicable, identify the source of the information used in choosing the recipient.

(h) *Prompt disposition of pending matters.* An enrolled actuary may not unreasonably delay the prompt disposition of any matter before the Internal Revenue Service, the Department of Labor, the Pension Benefit Guaranty Corporation, or any other applicable Federal or State entity.

(i) [Reserved]

(j) *Return of client's records.* (1) In general, an enrolled actuary must, at the request of a client, promptly return any and all records of the client that are necessary for the client to comply with his or her legal obligations. The enrolled actuary may retain copies of the records returned to a client. The existence of a dispute over fees generally does not

relieve the enrolled actuary of his or her responsibility under this section. Nevertheless, if applicable State law allows or permits the retention of a client's records by an enrolled actuary in the case of a dispute over fees for services rendered, the enrolled actuary need only return those records that must be attached to the client's required forms under ERISA and the Internal Revenue Code. The enrolled actuary, however, must provide the client with reasonable access to review and copy any additional records of the client retained by the enrolled actuary under State law that are necessary for the client to comply with his or her obligations under ERISA and the Internal Revenue Code.

(2) For purposes of this section, records of the client include all documents or written or electronic materials provided to the enrolled actuary, or obtained by the enrolled actuary in the course of the enrolled actuary's representation of the client, that preexisted the retention of the enrolled actuary by the client. The term "records of the client" also includes materials that were prepared by the client or a third party (not including an employee or agent of the enrolled actuary) at any time and provided to the enrolled actuary with respect to the subject matter of the representation. The term "records of the client" also includes any return, claim for refund, schedule, affidavit, appraisal or any other document prepared by the enrolled actuary, or his or her employee or agent, that was presented to the client with respect to a prior representation if such document is necessary for the taxpayer to comply with his or her current obligations under ERISA and the Internal Revenue Code. The term "records of the client" does not include any return, claim for refund, schedule, affidavit, appraisal or any other document prepared by the enrolled actuary or the enrolled actuary's firm, employees or agents if the enrolled actuary is withholding such document pending the client's performance of its contractual obligation to pay fees with respect to such document.

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(l) The rules of this section apply to all actuarial services and related acts performed on or after May 2, 2011.

Subpart D—Suspension or Termination of Enrollment

AUTHORITY: Sec. 3042(b), ERISA, 29 U.S.C. 1242(b).

SOURCE: 43 FR 39757, Sept. 7, 1978, unless otherwise noted.